

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GERALD A. HAYNOR,

Plaintiff,

v.

Case Number 04-10223-BC
Honorable David M. Lawson

GENERAL MOTORS CORPORATION,

Defendant.

ORDER OF DISMISSAL WITHOUT PREJUDICE

The plaintiff filed his complaint on August 25, 2004, seeking relief under ERISA. On May 13, 2005, the defendant filed a motion to affirm the administrator's decision or, in the alternative, for summary judgment. On June 24, 2005, the plaintiff filed a response in which he agreed to voluntarily dismiss the case without prejudice due to his failure to exhaust his administrative remedies under ERISA. The defendant argued in its reply that the case should be dismissed with prejudice because the plaintiff's claims should have been brought pursuant to the Labor Management Relations Act rather than ERISA.

"[T]he party who brings the suit is master to decide what law he will rely upon." *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913). The plaintiff brought his complaint under ERISA, not under the LMRA. The plaintiff now agrees to a voluntary dismissal for failure to exhaust administrative remedies. In *Ravencraft v. UNUM Life Insurance Company of America*, 212 F.3d 341 (6th Cir. 2000), the plaintiff brought suit under ERISA to recover benefits under an employer-sponsored insurance plan. The district court dismissed the case with prejudice, but the Sixth Circuit reversed. Because the case was dismissed due to procedural deficiencies rather than on the merits, "the district court should have exercised discretion to dismiss *without* prejudice."

Ravencraft, 212 F.3d at 344. The Court agrees with the plaintiff that the case should be dismissed without prejudice.

Accordingly, it is **ORDERED** that the complaint in the above captioned matter is **DISMISSED** without prejudice and without costs or attorney fees to either party.

It is further **ORDERED** that the defendant's motion for summary judgment [dkt #20] is **DISMISSED AS MOOT**.

s/David M. Lawson

DAVID M. LAWSON
United States District Judge

Dated: February 28, 2006

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 28, 2006.

s/Tracy A. Jacobs

TRACY A. JACOBS